vested in a city in affording pleasure, exercise and amusement, etc., in public parks. One of these cases was decided by the Supreme Court of our own State (cited supra), wherein it was held that the city was within its right in leasing or renting space in a park for the purpose of furnishing refreshments to those visiting it; the other was decided by the Supreme Court of West Virginia, where it was held that a lease by a city of a part of a public park to improve it and use it at times for training and running race horses for a rental to the city, reserving access at times to the public for riding and driving on the track, was a legitimate use of the park and not an ultra vires act (Bryant *v.* Logan, 56 W. Va. 141, 145, 49 S. E. 21, 23, 3 Ann. Cas. 1011). The court in the latter case states that, regardless of the broad powers in this connection granted the city by the Legislature, nevertheless the act of the city complained of was not an unlawful diversion of the park, the court saying:

" 'Racing horses is enjoyed by thousands and thousands of people, high and low, rich and poor. The use of the park for this purpose would give people recreation and pleasure, and it is not foreign to the object for which it was purchased,' it having been acquired 'for the health, pleasure and comfort of the people.'

"Parks are particularly inviting to children who live in cities. It is a matter of common knowledge that cities go to great expense to condemn valuable property upon which there are improvements for the purpose of affording parks that are devoted exclusively to playgrounds for children. And while public parks usually are resorts for persons, both old and young, it may be said that they are particularly designed for the amusement and recreation of children, and a place where they may go to play in the open air and light. It is hard to imagine a more appropriate way, if properly conducted, for the city to provide exercise and enjoyment for children than was afforded in this case. We think that the use of a park for the purpose of providing Shetland ponies of reasonable gentleness upon which children may ride, properly attended, either for a consideration or gratis, affords beyond doubt exercise, amusement, recreation and pleasure for such children, and is not foreign to the object for which public parks are maintained, and that the city, having undertaken to do these things, is liable for negligence in the doing of them."

Negligence—Proximate Cause.—In Keiper *v.* Pacific Gas & Electric Co. (California), 172 Pac. 180, it was laid down that where an owner negligently left his automobile unattended on street car tracks and a street car was negligently run into it, catapulating it against one working at the curb of the street, the owner of the automobile was liable for the injuries. The following is from the opinion:

"The case of Williams *v.* S. F. & N. W. R'y (6 Cal. App. 718, 93 Pac. 122), is, as to the general nature of the facts, also noticeably

similar to this case. In that case the plaintiff's wife was driving an excitable horse along a public highway upon a portion of which the defendant had placed, and for a long time previously to the accident had maintained and at the time of the accident still maintained, a woodpile. The horse became frightened at the noise made by a passing locomotive traveling over the defendant's railroad track, situated near and running parallel with the highway, and started to run. The deceased was unable to control or manage the animal, and while the horse was running at a lively rate of speed the vehicle to which the horse was attached and in which the deceased was riding collided with said woodpile, the result of the force of the impact being to throw her with such violence to the ground that she sustained fatal injuries. It was argued in that case that the placing of the obstruction in the public highway was not the proximate cause of the damage. The court said:

"'The defendant was primarily at fault in maintaining the obstruction upon the highway. * * * "There is always * * * ground for apprehending accidents from obstructions upon highways, and any person who wrongfully places them there or aids in so doing must be held responsible for such accidents as may occur by reason of their presence." * * * The rule is that the defendant is answerable in law for negligence proximate in causal relation to the damage; or, in other words, it is liable if the obstruction for the existence of which it is responsible was the direct cause of the accident, with its resulting damages.'

"So here the appellant was confessedly primarily at fault in placing and leaving his machine in a place where it would necessarily operate as an obstruction to the passage of the cars of the electric company over and along its track; and, as above declared, the negligence involved in that wrongful act necessarily continued so long as the obstruction remained and until it had contributed to the damage which could not have occurred but for said obstruction."

In Elsly *v.* Fidelity and Casualty Co. of New York, the Supreme Court of Indiana, 120 N. E. 42, held that under a policy of accident insurance which provided, among other things, for an indemnity of $12.50 per week "against bodily injury sustained through accidental means, and resulting directly and exclusively of other causes in immediate, continuous and total disability" and also that "sunstroke * * * suffered through accidental means * * * shall be deemed a bodily injury within the meaning of the policy," that the disability of the insured resulting from a sunstroke while riding on a street car to his work was an accident contemplated by the policy. To the contrary contention the court says:

"A construction of the provision of the policy that 'sunstroke

* * * suffered through accidental means * * * shall be deemed a bodily injury within the meaning of this policy' will be decisive of the only question of importance in this case. The contention of appellee is that in the term 'accidental means' as therein used some violence, casualty, or vis major, is necessarily involved, and that disability or death engendered by exposure to the sun's heat, or other atmospheric influence, cannot properly be said to be accidental, unless the exposure is itself brought about by circumstances which give it the character of an accident. In other words, if the exposure to the heat of the sun was intentionally encountered in the ordinary performance of a person's usual duties of life or occupation, it is not accidental; but if a person should, by reason of shipwreck or other like occurrence, be left in a position in the heat of the sun, and thereby suffered sunstroke, the means would be accidental. This is the view taken in the case of Sinclair *v.* Maritime, etc., Co., 3 Ell. & Ell. 478, and that case is followed to a great extent by the following cases: Dozier *v.* Fidelity, etc., Co. (C. C.) 46 Fed. 446, 13 L. R. A. 114; Semancik *v.* Continental Casualty Co. (1914), 56 Pa. Super. Ct. 392; Continental Casualty Co. *v.* Pittman (1916), 145 Ga. 641, 89 S. E. 716; and Bryant *v.* Continental Casualty Co. (Tex. Civ. App.), 145 S. W. 636.

"The purpose of accident insurance is to protect the insured against accidents that occur while he is going about his business in the usual way, without any thought of being injured or killed, and when there is no probability, in the ordinary course of events, that he will suffer injury or death. The reason men secure accident insurance is to protect them from the unforeseen, unusual, and unexpected injury that might happen to them while pursuing the usual and ordinary routine of their daily vocation, or the doing of the things that men do in the common everyday affairs of life. We are of opinion that the better reasoning points out, and the weight of authority holds the true test to be, that if in the act which precedes the injury, though an intentional act, something unusual, unforeseen, and unexpected occurs, which produces the injury, it is accidental; but, if in the act which precedes the injury something usual, foreseen, and expected occurs, which produces the injury, it is not accidentally effected. We are supported in our holding by the following cases, which involve the question of whether sunstroke, suffered while engaged in the usual daily duties, is accidental: Continental Casualty Co. *v.* Johnson, 74 Kan. 129, 85 Pac. 545, 6 L. R. A. (N. S.) 609, 118 Am. St. Rep. 308, 10 Ann. Cas. 851; Pack *v.* Prudential Cas. Co. (1916), 170 Ky. 47, 185 S. W. 496, L. R. A. 1916E, 952; Higgins *v.* Midland Cas. Co. (1917), 281 Ill. 431, 118 N. E. 11; Bryant *v.* Continental Casualty Co. (1916), 107 Tex. 582, 182 S. W. 673, L. R. A. 1916E, 945, Ann. Cas. 1918A, 517. The last case above cited overrules the hold-

ing of the lower court in the same case reported in 145 S. W. 636, upon which the Pittman and Semancik Cases, supra, were largely based."

Attorney and Client; Negligence in Examining Title.—In Jacobsen *v.* Petersen, decided June 7, 1918 (103 Atl. 983), the Supreme Court of New Jersey holds that it is the duty of an attorney, who is employed to investigate the title to real estate, to make a painstaking examination of the records, and to report all facts relating to the title. He is therefore liable for any injury that may result to his client from negligence in the performance of his duties, that is, from a failure to exercise ordinary care and skill in discovering in the records and reporting all the deeds, mortgages, judgments, etc., that affect the title in respect to which he is employed. Where an attorney negligently omits to report the fact of a judgment, which is a lien upon real estate the title of which he was employed to investigate, and his client buys upon the faith of such report and without knowledge of such judgment, the measure of damages is the amount the client is caused to pay out to remove the lien of such judgment, and this is so, even though the client subsequently sells the real estate for a sum in excess of its total cost to him, including the discharge of the judgment.